

# Safeguarding the United States

## *Enforcement of Coast Guard safety and security zones.*

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After the terrorist attacks of September 11, 2001, there was an immediate and overwhelming focus on domestic maritime security law enforcement operations. The Coast Guard received unprecedented numbers of requests to establish security zones at high-value assets, such as naval vessels and facilities, critical port infrastructure, and nuclear facilities, to name just a few. The need for such zones quickly outgrew the Coast Guard's law enforcement resources. To meet increased security requirements in U.S. ports, waterways, and coastal areas, with limited Coast Guard resources, many Coast Guard field commanders turned to state and local authorities for assistance in enforcing these security zones (Figure 1).

### **Law Enforcement**

While it was clear that the Captain of the Port (COTP) could request other entities to assist in enforcing security zones, and that federal case law long recognized that states had the ability to confer arrest authority for federal criminal viola-

tions, many states had concerns as to whether or not their state law enforcement officers could enforce a federal safety or security zone. To resolve the problem, Congress inserted a provision in the Coast Guard and Maritime Transportation Act of 2004 (CGMTA)<sup>1</sup> to resolve these concerns. President George W. Bush signed CGMTA into law on August 9, 2004.



**Figure 1: A Boston Police boat and a Coast Guard 25-footer secure Rows Wharf during the 2004 Democratic National Convention. PA3 Mike Lutz, USCG.**







**Figure 2: A Coast Guard boat and a boat from the Alabama Marine Patrol work to maintain a Coast Guard safety zone. PA3 Jonathan McCool, USCG.**

Section 801 of the CGMTA created a new § 70119<sup>2</sup> in title 46, United States Code. Section 70119 clarified authority for state law enforcement officers. Officers with state criminal arrest powers may make felony arrests for violations of most Coast Guard-established safety and security zones, employed for domestic port security operations.<sup>3</sup>

Before enactment of 46 U.S.C. § 70119, the Coast Guard contended that, consistent with well-settled law, state law enforcement officers are permitted to enforce federal statutes where such enforcement activities do not impair federal regulatory interests.<sup>4</sup> Many state agencies, however, desired congressional clarification of that view.

Statute 46 U.S.C. § 701109 reads as follows:

*§ 70119. Enforcement by State and local officers*

*(a) In general.—Any State or local government law enforcement officer who has authority to enforce State criminal laws may make an arrest for violation of a security zone regulation prescribed under section 1 of title II of the Act of June 15, 1917 (chapter 30; 50 U.S.C. 191) or security or safety zone regulation under section 7(b) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)) or a safety zone regulation prescribed under section 10(d) of the Deepwater Port Act of 1974 (33 U.S.C. 1509(d)) by a Coast Guard official authorized by law to prescribe such regulations, if—*

*(1) such violation is a felony; and*

*(2) the officer has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.*

*(b) Other powers not affected.—The provisions of this section are in addition to any power conferred by law to such officers. This section shall not be construed as a limitation of*

*any power conferred by law to such officers, or any other officer of the United States or any State. This section does not grant to such officers any powers not authorized by the law of the State in which those officers are employed.*

Statute 46 U.S.C. § 70119 does not create new authority for the Coast Guard, nor does it involve the exercise of Coast Guard law enforcement authority by state and local officers. Instead, § 70119

grants federal arrest power in limited circumstances to state or local government law enforcement officers who have authority to enforce state criminal laws, provided that the controlling state law does not preclude such officers from exercising federal arrest power. Accordingly, employment of state and local officers to enforce Coast Guard security and safety zones must be predicated on a review of the applicable state law providing law enforcement powers to the officers, with a view to ensuring that state law does not bar them from enforcing federal felony statutes.

### **Safety Zone Enforcement**

Even in those states where state law enforcement officials are precluded from enforcing federal law, they still may be able to effectively enforce a security or safety zone (Figure 2 & 3). These state law enforcement officials, while without power to enforce federal law, would be exercising their state powers to enforce state law.

For this scenario to be applied practically, the behavior prohibited by the security or safety zone must also be prosecutable as a violation of state law, such as trespassing. This would be similar to the situation where Department of Defense officials have arrested individuals for trespass under 18 U.S.C. § 1382, whereby the waters included within a security zone were essentially treated as part of a Naval reservation for purposes of the trespass statute. Government ownership of the underlying water areas is not a requisite for enforcement.<sup>5</sup>

In situations where state law enforcement officials are precluded from enforcing federal law, the state law enforcement agency may assist by providing a platform from which Coast Guard boarding officers can engage in law enforcement activities.



**Figure 3: A Coast Guard boat patrols Boston Harbor. PA3 Andrew Shinn, USCG.**

In the absence of an express state law bar, therefore, appropriate state and local government law enforcement officers may make arrests for, and thereby enforce, felony and misdemeanor violations, including attempts, of Coast Guard safety and security zones. These include nearly all the zones typically employed in domestic port security.

#### **Coast Guard/Law Enforcement Cooperation**

Regardless of the form the assistance takes, whether it is direct enforcement of federal law, enforcement of an underlying state law, or providing assistance in the form of boarding platforms, the Coast Guard seeks to establish agreements, typically in the form of a memorandum of agreement (MOA). An MOA outlines how the Coast Guard and the state agencies will assist each other. These agreements, which are developed by the cognizant Coast Guard district commander, are thoroughly vetted by Coast Guard attorneys.

A memorandum of agreement ensures that lead agency and respective roles are clearly identified and that the MOA and its contemplated activities are authorized by law and in accordance with current Coast Guard and state policy. Additionally, these agreements tend to address potentially valuable assistance, including patrolling or monitoring of safety and security zones, informing others of the existence of the zone, and detecting and reporting targets of interest.

To date, the Coast Guard has signed memoranda of agreement on law enforcement assistance with a number of states, including Maine, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and Florida. A typical MOA is quite detailed and specifies to the greatest degree possible legal authorities, common definitions, and, perhaps most importantly, the

roles and responsibilities of each agency. These agreements can also contain addendums to address local needs below the state level.

Coast Guard districts are continuing discussions with a number of other states, and Coast Guard hopes that more MOAs are signed. These agreements, along with the assistance provided by state and local law enforcement, have been a powerful force multiplier in helping to ensure U.S. port security.

#### **Endnotes**

<sup>1</sup> Coast Guard and Maritime Transportation Act of 2004, Pub. L. No. 108-293, 118 Stat. 1028.

<sup>2</sup> There is some question as to whether § 70119 is properly numbered. Until Title 46 is republished, the subject section's precise location will be unknown. This memorandum refers to the subject section as "§ 70119" or "section 70119," reflecting the language in the CGMTA.

<sup>3</sup> The enumerated zones include "security zone regulation[s] under section 1 of title II of the Act of June 15, 1917 (chapter 30; 50 U.S.C. 191) or security or safety zone regulations under section 7(b) 24 of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)) or [ ] safety zone regulation[s] prescribed under section 10(d) of the Deepwater Port Act of 1974 (33 U.S.C. 1509(d))." CGMTA, Section 801.

<sup>4</sup> *Ker v. California*, 374 U.S. 23 (1963); *Florida Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); Op. Off. Legal Counsel, U.S. Department of Justice, Assistance by State and Local Police in Apprehending Illegal Aliens (Feb. 5, 1996).

<sup>5</sup> See, for example, *U.S. v. Allen*, 924 F.2d 29 (2d Cir. 1991); *U.S. v. De Jesus*, 108 F.Supp.2d 68 (D. PR. 2000).

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